

Benton County Planning Department

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Please note that the Critical Areas Ordinance by the Watershed Company has been totally revised and that this document is no longer under consideration. Please access the current Critical Areas Ordinance on the Planning Dept.'s 2017 Periodic Update Materials Page.

DATE: May 2, 2016

TO: BENTON COUNTY PLANNING COMMISSION

FROM: BENTON COUNTY PLANNING DEPARTMENT

RE: WORKSHOP REPORT ON THE UPDATE OF THE PROPOSED BENTON COUNTY CRITICAL AREAS ORDINANCE

BACKGROUND:

The Growth Management Act (GMA) requires local jurisdictions throughout Washington, including Benton County, to periodically review and evaluate their adopted critical areas policies and regulations. The County must have in place policies and regulations that designate and protect the functions and values of critical areas.

Benton County has contracted with The Watershed Company to accomplish this review. Attached to this memo is a Critical Areas Provision Update Report by The Watershed Company. The report reviews the existing Benton County Ordinance (BCC Title 15) and the portions of the Benton County Comprehensive Plan that relate to critical areas. The consultant will be present at the May 10, 2016 meeting to present the report, discuss the best available science used in developing the report and to answer any questions the Planning Commission or public will have.

MEMORANDUM



Date: October 23, 2015
To: Benton County Planning Department
From: The Watershed Company
Project Name: Critical Areas Regulations Update

Subject: Project Documentation Memo

The Growth Management Act (GMA) requires local jurisdictions throughout Washington, including Benton County (County), to periodically review and evaluate their adopted critical areas policies and regulations.

The purpose of this memo is to document key points regarding the development of the updated draft critical areas regulations (CARs) to date. The key points briefly address the project approach, the contents of specific chapters, the inclusion of best available science (BAS), and additional opportunities for enhanced protection of critical areas.

The draft CARs discussed in this memo will apply within unincorporated Benton County, but outside of shoreline jurisdiction as determined by the Shoreline Master Program (SMP). Additionally, due to the Voluntary Stewardship Program provisions (in RCW 36.70A.700 through 63.70A.760), the draft CARs discussed in this memo will not apply to agricultural activities (agricultural activities will still be subject to the requirements of BCC Chapters 15.10 through 15.40).

Project Approach

An early step in the project was to assemble a list of relevant sources of BAS as required by WAC 365-195-915(1)(b). This list accompanies this memo as Attachment A (Sources of Best Available Science for Benton County Critical Areas, The Watershed Company, October 2015).

Existing County CARs were then reviewed for consistency with BAS, as well as the GMA and implementing rules. The CARs contained in Section 15.06 of the County's SMP were generally considered the existing CARs for this project, as these CARs were recently updated (the SMP went into effect in February 2015) and approved by the Washington State Department of Ecology (Ecology) as part of the SMP update process. These existing CARs were generally found to be consistent with BAS, the GMA, and implementing rules.

Working from the existing CARs described in the previous paragraph, the draft CARs were then assembled. Because the existing CARs were generally found to be consistent with BAS, the GMA, and implementing rules, assembly of the draft CARs primarily involved reorganizing and reformatting the existing CARs.

Key Points by Critical Area Type

In this section, key points regarding the development of the draft CARs are provided for specific critical area types. The key points briefly address contents of specific chapters, the inclusion of BAS, and additional opportunities for enhanced protection of critical areas.

Wetlands

The draft wetlands chapter features several regulations that address activities proposed within wetlands or their buffers.

Wetland buffers range from 40 to 190 feet based on wetland category and habitat score. Wetland buffer averaging may be allowed. To be allowed, the total area of the buffer after averaging must be equal to the area required without averaging, and the buffer at its narrowest point must not be less than either $\frac{3}{4}$ of the required width or 75 feet for Category I and II, 50 feet for Category III and 25 feet for Category IV, whichever is greater. The proposed wetland buffer scheme is consistent with Ecology (2012) guidance (guidance from state natural resource agencies can be considered BAS).

Standard compensatory mitigation ratios for alterations to wetlands range from 1.5:1 to 24:1 depending on the mitigation approach. Compensatory mitigation ratios are consistent with Ecology (2012) guidance.

Creeks

The draft creeks chapter features regulations that address activities proposed in the vicinity of creeks.

Proposed creek buffers are as follows: 100 feet for fish-bearing creeks; 50 feet for non-fish bearing creeks.

Within the semi-arid conditions of Benton County, most riparian functions, including shade, erosion control, and water quality filtration take place within 20 to 65 feet (Buffler et. al 2005, Danehy and Kirpes 2000, Dillaha et. al 1989, Mayer et al. 2007, Zhang et al. 2010). In areas with established willows and cottonwoods, organic matter inputs may occur from up to one site-potential-tree-height, or approximately 125 feet.

Typical small, often seasonally flowing, non-fish bearing creeks in Benton County naturally support a narrow corridor of shrubs or trees. A 50-foot buffer is expected to provide key wildlife habitat, shading, and water quality filtration functions for these creeks.

Creeks with more complex features, such as channel deltas, floodplains, and areas of alluvial soils that support broader vegetated riparian corridors, would benefit from wider buffers to support wildlife corridors and organic contributions from established vegetation. A 100-foot buffer would be expected to protect most of the functions associated with these more complex features.

Critical Aquifer Recharge Areas

This chapter applies to development activities within or adjacent to critical aquifer recharge/interchange areas. A site analysis is required for certain activities if such activities have the potential to impact recharge/interchange areas. The County may require specific measures where regulated substances are associated with a development which has potential to impact an aquifer.

The following additional opportunities for enhanced protection of critical aquifer recharge areas were identified during development of the draft CARs:

1. County groundwater resources occur in several distinct geohydrologic subareas defined by physiographic, geologic, and hydrologic characteristics. Protection of groundwater recharge and water quality for potable water supplies in these areas may benefit from different management strategies depending on site-specific aquifer properties and infiltration and recharge conditions. These subareas are as follows: Prosser Subbasin; Lower Yakima River Valley, including WRIA 37; Columbia River flood deposits, including WRIA 40; Rattlesnake Ridge; Cold Creek/Dry Creek Drainages, and Horse Heaven Hills, including WRIA 31.
2. Ecology well logs for public water supply wells in the County show many wells draw water from basalt aquifers, while others draw from unconsolidated sands and gravels. Draft CARA regulations address recharge in riverine corridors, floodplains and wetland areas, and unlined main canals of irrigation districts. These are almost all alluvial aquifer areas. Basalt aquifers in Benton County store and transmit large quantities of groundwater and could also be included under CARA regulations.
3. Public water supply data for the County (Washington Department of Health, Drinking Water Division) lists includes about 41 active Class A wells (serving 25 or more persons). The location of these wells, specific construction conditions, aquifers used, and other factors could be used to define wellhead protection areas for each well. In some cases, potential risks to recharge and water quality for these existing wells could be reduced or mitigated by specific measures.

4. A survey of irrigation districts in the County (Ecology, 1974) show about eight irrigation districts incorporated in or extending canals through the County. A review and documentation of irrigation canals in Benton County, to include lined canals, earth canals, and pipe and siphon distributions could aid review of new projects for CARA requirements.
5. Irrigation-induced recharge has increased the amount of deep percolation to shallow aquifers. CARA regulations could be reviewed as to how well they address potential water quality concerns for pesticides, nutrients, and herbicides in this artificial recharge.

Frequently Flooded Areas

This chapter applies to development activities within frequently flooded areas. Among other requirements, all developments must follow the provisions of the Benton County Flood Damage Prevention ordinance.

Geologically Hazardous Areas

This chapter applies to development activities within or adjacent to geologically hazardous areas, including steep slopes or hillsides. A site analysis is required for development activities within geologically hazardous areas and within 200 feet of geologically hazardous areas. A minimum hazard setback for development within or adjacent to a geologically hazardous area is the hazard setback recommended in the site analysis and/or by the Building Department.

Fish and Wildlife Habitat Conservation Areas

The provisions of this chapter shall apply to upland Priority Species and Priority Habitats. Buffers for upland Priority Species and Priority Habitats are determined by the Planning Manager based upon Washington Department of Fish and Wildlife recommendations after consultation with the applicant, state, and where appropriate, federal agencies and the Yakama Nation.



BENTON COUNTY

Critical Areas Ordinance (CAO) Update



BACKGROUND

Growth Management Act (GMA)

- Local jurisdictions must have policies and regulations that **designate and protect the functions and values** of critical areas, and must periodically review and evaluate them
- Critical areas include:
 - Wetlands
 - Areas with a critical recharging effect on aquifers used for potable water,
 - Fish and wildlife habitat conservation areas,
 - Frequently flooded areas,
 - Geologically hazardous areas
- “Shall include **the best available science**” (RCW 36.70A.172(1))

APPLICABILITY

Multiple sets of existing critical area regulations

- Unincorporated areas of Benton County outside of shoreline jurisdiction
 - BCC Chapters 15.10 through 15.40
- Unincorporated areas of Benton County inside shoreline jurisdiction
 - Section 15.06 of the County's shoreline master program

The current CAO update applies to unincorporated areas of Benton County outside of shoreline jurisdiction, excluding agricultural activities

APPROACH

- Assemble sources of BAS required as by WAC 365-195-915(1)(b)
- Review existing critical area regulations for consistency with BAS, GMA and implementing rules
 - Critical area regulations in Section 15.06 of the County's shoreline master program were generally considered the existing critical area regulations (adopted February 2015)
- Assemble draft critical areas regulations

BEST AVAILABLE SCIENCE

What is best available science?

- Best available science (BAS) is simply the best science that is available
- Reviewing BAS allows local jurisdictions to develop a science-based regulatory approach without having to conduct new scientific studies

BEST AVAILABLE SCIENCE

Common sources of scientific information and non-scientific information

Scientific Information

- Research
- Monitoring
- Inventory
- Survey
- Modeling
- Assessment
- Synthesis
- Expert opinion

Non-scientific information

- **Anecdotal information**
One or more observations which are not part of an organized scientific effort. (Example: “I saw a salmon in that stream.”)
- **Non-expert opinion**
Opinion of a person who is not a qualified scientific expert in a pertinent scientific discipline. (Example: “I do not believe there are salmon in that stream.”)
- **Hearsay**
Information repeated from communication with others. (Example: “At a lecture last week Dr. Smith said there were no salmon in that stream.”)

KEY POINTS BY CRITICAL AREA TYPE

Critical Area Type	Key Points of CAO
Wetlands	<ul style="list-style-type: none"> • Wetland buffers range from 40-190 feet, depending on category and habitat score. • Buffer averaging allowed, with limitations.
Creeks	<ul style="list-style-type: none"> • 100 feet buffer for fish-bearing creeks; 50 feet for non-fish bearing creeks.
Critical Aquifer Recharge Areas	<ul style="list-style-type: none"> • Site analysis required for activities that have the potential to impact recharge/interchange areas. • Measures may be required where regulated substances are associated with a development that has the potential to impact an aquifer.
Frequently Flooded Areas	<ul style="list-style-type: none"> • Development activities within frequently flooded areas must follow the provisions of the Benton County Flood Damage Prevention ordinance.
Geologically Hazardous Areas	<ul style="list-style-type: none"> • Applies to development activities within or adjacent to geologically hazardous areas, including steep slopes or hillsides. • Requires site analysis for development within 200 feet of geologically hazardous areas. • Minimum hazard setback is that recommended by site analysis or by set by the Building Department.
Fish and Wildlife Habitat Conservation Areas	<ul style="list-style-type: none"> • Applies to upland Priority Species and Priority Habitats. • Buffers determined by the Planning Manager based on recommendation of the Washington Department of Fish and Wildlife.

BENTON COUNTY

Critical Areas Provisions Update

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BENTON COUNTY

CRITICAL AREAS PROVISIONS UPDATE

INTRODUCTION

The Growth Management Act (GMA) requires local jurisdictions throughout Washington State, including Benton County (County), to periodically review and evaluate their adopted critical areas policies and regulations. Critical areas, as defined by the GMA (Revised Code of Washington [RCW] 36.70A.030(5)), include wetlands, areas with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas.

The County's critical area policies (including goals) are located in the Critical Resource Lands section of Chapter 3 of the Benton County Comprehensive Plan (Comprehensive Plan). The County's general critical area regulations are located in Chapters 15.10 through 15.40 of the Benton County Code (BCC). The County's shoreline critical areas regulations are located in Section 15.06 of the County's Shoreline Master Program.

Based on review and evaluation of these critical areas provisions, this document seeks to provide guidance to ensure that the County's general critical areas provisions are consistent with the best available science, the GMA, and/or its implementing rules. The first section of this document recommends potential updates to Comprehensive Plan policies. The remainder of the document sets forth updated general critical areas regulations.

BENTON COUNTY COMPREHENSIVE PLAN: CRITICAL RESOURCE LANDS

General Recommendations:

1. Organization of critical areas provisions

Issue: Per Washington Administrative Code (WAC) 365-195-915, counties should address "the specific policies...adopted to protect the functions and values of the critical areas at issue." The County's policies (including goals) to protect critical areas are located in the Critical Resource Lands section of Chapter 3 of the Comprehensive Plan. However, in addition to including provisions specifically

related to GMA critical areas, this section also includes provisions that are more broadly related to environmental quality in general. For example, this section also includes provisions related to noise and air quality.

Recommendation: Clearly identifying what specific provisions are intended to apply to GMA critical areas would help the County meet the above-referenced WAC. Moreover, the identification of specific provisions may also help with the administration and interpretation of critical areas provisions. Identification of specific provisions might be achieved by having critical areas provisions contained in a subsection of the existing Critical Resource Lands section.

2. Use of the term “critical resources”

Issue: The comprehensive plan uses the term “critical resources” to apply to “critical aquifer protection areas, frequently flooded areas, geologically hazardous areas, wetlands, and fish and wildlife conservation areas” (see page 2-9). The Growth Management Act refers to such areas as “critical areas.”

Recommendation: For clarity and consistency with the GMA, changing references to “critical resources” to “critical areas” is recommended.

Specific Recommendations:

1. Existing GOAL 35

Existing text: “To apply land use designations in a manner that avoids the fragmentation of areas identified through best available science and designated by the County, after public hearings, as important for the protection of regional bio-diversity. Actions to protect biodiversity shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of lands historically used for the production of food, agricultural products, grazing of livestock, or for the extraction of minerals.

For issues involving the need for ‘best available science,’ it is the responsibility of the Planning Department to identify ‘best available’ and recommend alternative actions based upon it. For science to be ‘best available’ it must also be practical and cost effective to apply it to the issue at hand.”

Recommendation: Remove the second paragraph related to best available science. WAC 365-195 addresses best available science in detail. Further, this paragraph may have some inconsistencies with WAC 365-195.

Recommended revised text: “To apply land use designations in a manner that avoids the fragmentation of areas identified through best available science and designated by the County, after public hearings, as important for the protection

of regional bio-diversity. Actions to protect biodiversity shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of lands historically used for the production of food, agricultural products, grazing of livestock, or for the extraction of minerals.”

2. Existing GOAL 30

Existing text: “Achieve sustain-ability of resource functions and values.”

Recommendation: A main directive of the GMA in regards to critical areas is to designate and protect the functions and values of critical areas. This Comprehensive Plan statement sets forth a goal that is slightly different than the GMA directive. Including language in the Comprehensive Plan that clearly reflects the GMA directive is recommended (while Goal 33 Policy A reflects the GMA directive, it appears to be limited to surface waters and groundwater, and therefore not applicable to all types of critical areas).

Recommended revised text: “Designate critical areas and protect the functions and values of critical areas.”

3. New GOAL

Recommendation: A second main directive of the GMA in regards to critical areas is to “give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.” Including language that clearly reflects this directive in a new Comprehensive Plan goal is recommended.

Recommended text: “Special consideration should be given to conservation or protection measures necessary to preserve or enhance anadromous fisheries.”

CHAPTER 15.50 GENERAL PROVISIONS

15.50.010 APPLICABILITY. BCC Chapters 15.50 through 15.120 apply to any real property located within unincorporated Benton County, which are outside shoreline jurisdiction, as determined by the Benton County Shoreline Master Program. Due to the provisions in RCW 36.70A.700 through 63.70A.760, the provisions or standards of BCC Chapters 15.50 through 15.120 shall not apply to agricultural activities in certain areas, as defined below. Such agricultural activities are still subject to the requirements of BCC Chapters 15.10 through 15.40.

15.50.020 PURPOSE. The purpose of BCC Chapters 15.50 through 15.120 is to meet the minimum requirements of the Washington State Growth Management Act, Chapter 36.70A RCW, by designating the Critical Areas located in unincorporated

Benton County and providing, through the use of the best science available, for the protection of the functions and values of those resources from incompatible and injurious use, encouraging the development of strategies to conserve and protect such resources, and preventing cumulative adverse environmental impacts to ground and surface water availability, to water quality, and to wetlands and streams, thereby ensuring the public health, safety, and general welfare while attempting to minimize public expenditures and efforts in response to floods, geological activity, and other natural disasters.

15.50.030 EXEMPTIONS.

- (a) All exempted activities shall use reasonable methods to avoid potential impacts to critical areas. To be exempt from this title does not give permission to degrade a critical area or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the responsible party's expense.
- (b) The following developments, activities, and associated uses shall be exempt from the provisions of this title, provided they are otherwise consistent with the applicable provisions of other local, state, and federal requirements:
- (1) Emergencies. Emergency actions are those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property and that require remedial or preventative action in a timeframe too short to allow for compliance with the requirements of this title.
- (i) Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area or its buffer.
- (ii) The person or agency undertaking such action shall notify the County within one working day following commencement of the emergency activity. Within 30 working days, the Planning Manager shall determine if the action taken was within the scope of the emergency actions allowed in this subsection. If the Planning Manager determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then enforcement provisions of shall apply.
- (iii) After the emergency, the person or agency undertaking the action shall fully fund and conduct necessary restoration and/or mitigation for any impacts to the critical area and buffers resulting from the emergency action in accordance with an approved critical area special study and

mitigation plan. The person or agency undertaking the action shall apply for review, and the alteration, critical area special study, and mitigation plan shall be reviewed by the Planning Manager in accordance with the review procedures contained herein. Restoration and/or mitigation activities must be initiated within one year of the date of the emergency, and completed in a timely manner.

(2) Operation, Maintenance, or Repair.

(i) Operation, maintenance, or repair of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees, or drainage systems, if the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair.

(ii) Operation and maintenance includes vegetation management performed in accordance with best management practices that is part of ongoing maintenance of structures, infrastructure, or utilities, provided that such management actions are part of regular and ongoing maintenance, do not expand further into the critical area, are not the result of an expansion of the structure or utility, and do not directly impact an endangered or threatened species.

(3) Passive Outdoor Activities. Recreation, education, and scientific research activities that do not degrade the critical area, such as fishing, hiking, and bird watching.

(4) Forest Practices. Forest practices regulated and conducted in accordance with the provisions of Chapter 76.09 RCW and forest practices regulations, Title 222 WAC, and those that are exempt from County jurisdiction, provided that forest practice conversions are not exempt.

15.50.040 IDENTIFICATION OF CRITICAL AREAS - MAPS.

(a) The Critical Areas Overlay Maps for critical areas are used as a general guide to the location, type and extent of critical areas. If present, whether mapped or not, critical areas are protected under all the provisions of this title and all related titles.

(b) The Critical Areas Overlay Maps are available for review in the Planning Department as either hard copy or computer generated images of the County's Geographic Information System. The maps will be amended over time to accurately reflect improvements in the accuracy of the data base.

(c) The Critical Areas Overlay Maps are also intended to alert the development community, appraisers, and current and prospective property owners of the potential encounter with natural site constraints due to critical areas, which may limit or cause alterations of development plans.

(d) If the Planning Manager has reason to believe that the property proposed for development contains a critical resource based on other map or data sources or review of aerial photographs, then the Planning Manager may require that additional information be provided prior to the County's acceptance of a development application as complete and ready for processing under current Benton County Codes.

(e) When any other title of the Benton County Code conflicts with this title, the more restrictive provision will apply.

15.50.050 INITIAL REVIEW. The Planning Manager shall perform an initial Critical Areas Review of any application for development or use. The initial review shall accomplish the following:

- (a) identify which critical areas or their buffers are present on the site;
- (b) determine whether or not the development falls within the potential critical area(s) and potential buffer(s);
- (c) in the case of a wetland, determine if it is subject to review under BCC Chapter 15.70 and if a delineation and wetland rating are necessary to establish whether a development may affect the wetland or its buffer;
- (d) determine if the development is likely to have an adverse impact on the functions and values of the critical area(s). Development consisting of new construction or a related activity connected with an existing single-family residence shall not be considered an adverse impact to, or displacement of, the functions and values of a critical area if ground coverage is not increased by more than twenty (20) percent, native vegetation is not altered, and no portion of any new construction is located closer to a critical area than the existing principal structure;
- (e) refer the applicant to such mitigating measures sufficient to protect the functions and values of the critical area and shall assist the applicant in the modification of the development to include specific measures, and appropriate monitoring strategy (where necessary), which meet the standards for the protection of the resource(s); and
- (f) determine if a Critical Areas Special Study is required.

15.50.060 CRITICAL AREAS SPECIAL STUDY - REQUIREMENTS.

(a) The Planning Manager may require an applicant to conduct a "Critical Areas Special Study" if the Planning Manager determines that the development could have adverse impacts on a critical area. The purpose of a Critical Areas Special Study is to adequately evaluate the proposal and all potential adverse impacts on a critical area. The study may be included as part of the environmental review process under SEPA as administrated by the County, in accordance with the provisions of this title.

(b) The study shall be performed by a professional who is licensed or qualified as an expert in the critical areas at issue. The study shall include the following where applicable:

- (1) The resume of the principal author(s) which disclose(s) their technical training and experience and demonstrates their stature as a qualified professional;
- (2) Identification and characterization of the critical area;
- (3) An assessment of any potential hazards associated with the proposed development;
- (4) An assessment of the impacts of the development proposal on any critical area; and
- (5) A mitigation plan which specifies maintenance, monitoring and bonding measures (where necessary).

15.50.070 BUFFER REQUIREMENTS.

(a) For any development or use subject to the requirements to provide a buffer around critical areas, the Planning Manager may allow buffer width averaging when the project proponent can demonstrate application of mitigation sequencing and that project elements would provide an equal or greater contribution to permanent critical resource protection than would the application of the standard buffer. The maximum reduction allowed in any location is 25 percent.

(b) The Planning Manager may require a wider than standard buffer when analysis of impacts by qualified individuals indicates that the standard requirement will not protect a critical area's functions and values.

(c) Where a legally established road or railway crosses a critical area buffer, the Planning Manager may approve a modification of the minimum required buffer width to the waterward edge of the improved road if a study submitted by the applicant and prepared by a qualified professional demonstrates that the part of the buffer on the upland side of the road sought to be reduced:

- (1) Does not provide additional protection of the waterbody; and
- (2) Provides insignificant biological, geological or hydrological buffer functions relating to the waterward portion of the buffer adjacent to the waterbody.

If the improved roadway corridor is wider than 20 feet, a study is not required.

15.50.080 CRITICAL AREAS RESOURCE MITIGATION FUND. There is hereby created a Critical Areas Resource Mitigation Fund which shall be administered by the Benton County Treasurer's Office. All funds derived from payments received in-lieu of on/off-site mitigation shall be deposited in the fund which shall be used for off-site critical area enhancement or critical area lands acquisition. Monies in said fund not needed for immediate expenditure shall be invested for the benefit of the Critical Areas Resource Mitigation Fund pursuant to RCW 36.29.020. For investment purposes, the Benton County Treasurer is hereby designated the fund manager.

15.50.090 PERMIT ISSUANCE.

(a) The Planning Manager may issue, issue with conditions, or deny the issuance of a permit, or its extension, in order to comply with and carry out the goals, purposes, objectives and requirements of BCC Chapters 15.50 through 15.120. The permit shall include the findings listed in BCC 15.50.090(b).

(b) A permit may be issued if:

(1) after consideration of all feasible Best Management Practices, including alternative designs, scale (size), locations, and management plans, the proposed development meets the standards of BCC Chapters 15.50 through 15.120, protects the functions and values of critical areas, and that required mitigation reduces impacts to insignificant levels on an individual and/or cumulative project basis;
or,

(2) adverse impacts to critical area functions and values are both unavoidable and necessary because of public health and safety, or if specific local or regional economic considerations override the public interest in the protection of the critical areas, or because all reasonable economic uses for the property would be denied as a result of circumstances peculiar to the subject property; and all unavoidable adverse impacts are offset by enhancement of other critical areas on or off-site.

15.50.100 VARIANCES.

(a) Variances from the standards of BCC Chapters 15.50 through 15.120 may be authorized by the Hearings Examiner in accordance with the procedures set forth in the

Benton County Code. The Hearings Examiner shall review the request and make a written finding that the request meets or fails to meet the variance criteria.

(b) A variance may be granted only if the applicant demonstrates that the requested action conforms to all of the criteria set forth as follows:

- (1) Special conditions and circumstances exist that are peculiar to the land, the lot, or something inherent in the land, and that are not applicable to other lands in the same district;
- (2) The special conditions and circumstances do not result from the actions of the applicant;
- (3) A literal interpretation of the provisions of BCC Chapters 15.50 through 15.120 would deprive the applicant of all reasonable economic uses and privileges permitted to other properties in the vicinity and zone of the subject property under the terms of BCC Chapters 15.50 through 15.120, and the variance requested is the minimum necessary to provide the applicant with such rights;
- (4) Granting the variance requested will not confer on the applicant any special privilege that is denied by BCC Chapters 15.50 through 15.120 to other lands, structures, or buildings under similar circumstances;
- (5) The granting of the variance is consistent with the general purpose and intent of BCC Chapters 15.50 through 15.120, and will not further degrade the functions or values of the associated critical areas or otherwise be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the subject property;
- (6) The decision to grant the variance includes the best available science and gives special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish habitat; and
- (7) The granting of the variance is consistent with the general purpose and intent of the Benton County Comprehensive Plan and adopted development regulations.

(c) In granting any variance, the Hearings Examiner may prescribe such conditions and safeguards as are necessary to secure adequate protection of critical areas from adverse impacts, and to ensure conformity with BCC Chapters 15.50 through 15.120.

(d) The Hearings Examiner shall prescribe a time limit within which the action for which the variance is required shall be begun, completed, or both. Failure to begin or complete such action within the established time limit shall void the variance.

(e) The burden of proof shall be on the applicant to bring forth evidence in support of the application and upon which any decision has to be made on the application

15.50.110 REASONABLE USE EXCEPTION.

(a) If the application of BCC Chapters 15.50 through 15.120 would deny all reasonable economic use of the subject property, the property owner may apply for an exception pursuant to this Section.

(b) An application for a reasonable use exception shall be made to the County and shall include a Critical Area Special Study, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to SEPA. The Planning Manager shall prepare a recommendation to the Hearings Examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria in BCC 15.50.110(d).

(c) The Hearings Examiner shall review the application and conduct a public hearing pursuant to the provisions of the Benton County Code. The Hearings Examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the reasonable use exception review criteria in BCC 15.50.110(d).

(d) Criteria for review and approval of reasonable use exceptions follow, one or more may apply:

(1) The application of BCC Chapters 15.50 through 15.120 would deny all reasonable economic use of the property;

(2) No other reasonable economic use of the property has less impact on the critical area;

(3) The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;

(4) The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of BCC Chapters 15.50 through 15.120, or their predecessors;

(5) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;

(6) The proposal will result in no net loss of critical area functions and values consistent with the best available science; or

- (7) The proposal is consistent with other applicable regulations and standards.
- (e) The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

15.50.120 VIOLATIONS - PENALTIES. The violation of any of the provisions of this title shall constitute an infraction. Each such violation shall constitute a separate infraction for each and every day or portion thereof during which such violation is committed, continued, or permitted.

15.50.130 INJUNCTIVE RELIEF. Notwithstanding the existence or use of any other remedy or means of enforcement of the provisions hereof, Benton County may seek legal or equitable relief to enjoin any acts or practices which constitute a violation of any of the provisions of this title and compel compliance with all provisions of this title. The costs of such action shall be taxed against the person violating the provisions of this title. The Planning and Building Department may accept a written assurance of discontinuance of any act in violation of this title from any person who has engaged in such act. Failure to comply with the assurance of discontinuance shall be a further violation of this title.

15.50.140 VIOLATIONS - INVESTIGATIONS - EVIDENCE. An authorized representative of the Planning and Building Department may investigate alleged or apparent violations of this title. If the name of the person or contractor allegedly or apparently in violation of this title is not known, or if the name of the person or contractor does not appear on the latest list of permits compiled by the department, upon presentation of credentials, an authorized representative of the department may inspect sites at which work is performed to determine whether all necessary permits and determinations have been issued. Upon request of the authorized representative of the department, the person or contractor allegedly or apparently in violation of this title shall provide information identifying themselves and the contractor.

15.50.150 VIOLATIONS - FAILURE TO PROVIDE INFORMATION IDENTIFYING CONTRACTOR. Willful refusal to provide information identifying a person or contractor as required by BCC 15.50.140 is a misdemeanor.

15.50.160 NOTICE OF INFRACTION - SERVICE. An authorized representative of the Planning and Building Department may issue a notice of infraction if the authorized representative reasonably believes that the provisions of this title have been violated. A notice of infraction issued under this title shall be personally served on the person or contractor named in the notice by an authorized representative of the department. If the contractor named in the notice of infraction is a firm or corporation, the notice may be personally served on any employee of the firm or corporation. If a

notice of infraction is personally served upon an employee of a firm or corporation, the department shall within four (4) days of service send a copy of the notice by certified mail to the firm or corporation if the department is able to obtain the firm or corporation's address.

15.50.170 NOTICE OF INFRACTION - FORM - CONTENTS. The notice of infraction shall include the following:

- (a) A statement that the notice represents a determination that the infraction has been committed by the person or contractor named in the notice and that the determination shall be final unless contested as provided in this chapter;
- (b) A statement that the infraction is a noncriminal offense for which imprisonment shall not be imposed as a sanction;
- (c) A statement of the specific infraction for which the notice was issued;
- (d) A statement that monetary penalties as set forth below have been established for each infraction;
- (e) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;
- (f) A statement that at any hearing to contest the determination the county has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the person or contractor may subpoena witnesses, including the authorized representative of the department who issued and served the notice of infraction;
- (g) A statement, which the person who has been served with the notice of infraction shall sign, that the person or contractor promises to respond to the notice of infraction in one of the ways provided in this chapter;
- (h) A statement that refusal to sign the infraction as directed in subsection (g) is a misdemeanor and may be punished by a fine or imprisonment in jail; and
- (i) A statement that a person or contractor's failure to respond to a notice of infraction as promised is a misdemeanor and may be punished by a fine or imprisonment in jail.

15.50.180 NOTICE OF INFRACTION - FILING - HEARING IN DISTRICT COURT. A violation designated as an infraction under this title can be heard and determined by either a district or superior court.

15.50.190 NOTICE OF INFRACTION - DETERMINATION INFRACTION COMMITTED. Unless contested in accordance with this chapter, the notice of infraction represents a determination that the person or contractor to whom the notice was issued committed the infraction.

15.50.200 NOTICE OF INFRACTION - RESPONSE - REQUESTING A HEARING - FAILURE TO RESPOND OR APPEAR - ORDER SET ASIDE.

- (a) A person or contractor who receives a notice of infraction shall respond to the notice as provided herein within fourteen (14) days of the date the notice was served.
- (b) If the person or contractor named in the notice of infraction does not want to contest the determination, the person or contractor shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records, and a record of the response and order shall be furnished to the department.
- (c) If the person or contractor named in the notice of infraction wants to contest the determination, the person or contractor shall respond by completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person or contractor in writing of the time, place, and date of the hearing. The date of the hearing shall not be sooner than fourteen (14) days from the date of the notice of hearing, except by agreement of the parties.
- (d) If any person or contractor issued a notice of infraction (1) fails to respond to the notice of infraction as provided in BCC 15.50.200(b), or (2) fails to appear at a hearing requested pursuant to BCC 15.50.200(c), the court shall enter an appropriate order assessing the monetary penalty prescribed for the infraction and shall notify the department of the failure of the person or contractor to respond to the notice of infraction or to appear at a requested hearing.
- (e) An order entered by the court under BCC 15.50.200(d)(2) may, for good cause shown and upon such terms as the court deems just, be set aside for the same grounds a default judgment may be set aside in civil actions.

15.50.210 NOTICE OF INFRACTION - PERSON'S REFUSAL TO SIGN - MISDEMEANOR. It is a misdemeanor for any person who has been personally served with a notice of infraction to refuse to sign a written promise to respond to the notice.

15.50.220 NOTICE OF INFRACTION - PERSON'S FAILURE TO RESPOND - MISDEMEANOR. It is a misdemeanor for any person who has been personally served

with a notice of infraction to willfully violate the written promise to respond to the notice.

15.50.230 REPRESENTATION BY ATTORNEY. A person or contractor subject to proceedings under this title may appear or be represented by counsel. Each party to an infraction case is responsible for costs incurred by that party. No costs or attorney fees may be awarded to either party in an infraction case.

15.50.240 INFRACTION - HEARING - PROCEDURE - BURDEN OF PROOF - ORDER - APPEAL.

- (a) A hearing held to contest the determination that an infraction has been committed shall be without a jury.
- (b) The court may consider the notice of infraction and any sworn statement submitted by the department's authorized representative who issued and served the notice in lieu of his or her personal appearance at the hearing. The person or contractor named in the notice may subpoena witnesses, including the authorized representative who issued and served the notice, and has the right to present evidence and examine witnesses present in court.
- (c) The burden of proof is on the department to establish the commission of the infraction by a preponderance of the evidence.
- (d) After consideration of the evidence and argument, the court shall determine whether the infraction was committed. If it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the court's records. If it has been established that the infraction was committed, an appropriate order shall be entered in the court's records.

15.50.250 INFRACTION - EXPLANATION OF MITIGATING CIRCUMSTANCES.

- (a) A hearing held for the purpose of allowing a person or contractor to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person or contractor may not subpoena witnesses. The determination that an infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances.
- (b) After the court has heard the explanation of the circumstances surrounding the commission of the infraction an appropriate order shall be entered in the court's records.
- (c) The person or contractor may not appeal the court's determination or order.

15.50.260 INFRACTION - MONETARY PENALTY. A monetary penalty imposed by the court under this chapter is immediately payable. If the person or contractor is unable to pay at that time the court may, in its discretion, grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment, the court shall notify the department of the failure to pay the penalty and the department shall not issue the person or contractor any future permits for any work until the monetary penalty has been paid.

15.50.270 VIOLATIONS--PENALTIES. (a) Upon a finding of a first violation of any provision of this title, any person or contractor shall be punished by a civil penalty not to exceed five hundred dollars (\$500.00) for said violation, shall be responsible for court costs, if applicable, and shall be ordered to pay restitution for any damages caused by said violation.

(b) Upon the courts finding of a second or subsequent violation of the same provision of this title, any person or contractor shall be found guilty of a misdemeanor.

15.50.280 SEVERABILITY. If any provision of this title is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the title and the applicability thereof to other persons and circumstances shall not be affected thereby.

15.50.290 EFFECTIVE DATE. This ordinance shall take effect and be in full force upon its passage and adoption.

CHAPTER 15.60 DEFINITIONS

15.60.010 DEFINITIONS. For the purposes of chapters 15.50 through 15.110, the following words and phrases shall have the indicated meanings unless the context clearly indicates otherwise:

- (1) "Accessory" means any use or development incidental to and subordinate to a primary use of a use or development.
- (2) "Adjacent" means to be nearby and not necessarily abutting.
- (3) "Agriculture Activities" means agricultural uses and practices currently existing or legally allowed on rural land or agricultural land designated under RCW 36.70A.170 including, but not limited to: producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for

- agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, when the replacement facility is no closer to a critical area than the original facility; and maintaining agricultural lands under production or cultivation.
- (4) "Agricultural equipment" and "agricultural facilities" includes, but is not limited to:
- (a) The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including but not limited to pumps, pipes, tapes, canals, ditches, and drains;
 - (b) corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands;
 - (c) farm residences and associated equipment, lands, and facilities; and
 - (d) roadside stands and on-farm markets for marketing fruit or vegetables.
- (5) "Agricultural land" means those specific land areas on which agriculture activities are conducted.
- (6) "Appeal" means a request for review of a reviewing official's decision, determination, order or interpretation of any provision of this title.
- (7) "Applicant" means a person, party, firm, corporation, or other legal entity that proposes a development, construction or use on a site.
- (8) "Aquifer" means a body of rock or soil that contains sufficient saturated permeable material to conduct groundwater and to yield economically significant quantities of groundwater to wells and springs.
- (9) "Aquifer Recharge/Interchange Area" means those natural and man-made land features that hold or convey surface waters having connectivity to groundwater.
- (10) "Aquifer unconfined" means groundwater lying between the soil profile and the shallowest impermeable layer (i.e., clay, basalt).
- (11) "Best Management Practices (BMP'S)" means physical, structural, and/or managerial practices that when used singularly or in combination, protect the

- functions and values of critical areas. BMP's are current and evolving conservation practices, systems of practices, management and operational measures, design and construction techniques, or normal and accepted industry standards that are applied to land uses and land use activity in a manner which:
- (a) controls soil loss and reduces water surface and groundwater quality degradation caused by nutrients, animal wastes, toxins, and sediment; and,
 - (b) mitigates adverse impacts to the natural chemical, physical and biological environment of the County; and,
 - (c) facilitates the utilization of the county's natural resources on a long term, sustainable yield basis.
- (12) "Buffer" means a designated area used to separate incompatible uses or protect resources or development (also known as a "setback"). Buffers are generally undeveloped areas. There are different types of buffers for different purposes:
- (a) buffers which protect sensitive natural resources (critical areas) from the adverse impacts of development are generally undeveloped open space which are ecologically part of the protected resource;
 - (b) buffers which protect the integrity of development from certain natural hazards such as slope instability, floods or fire prone areas, are building setbacks which avoid the hazardous condition;
 - (c) buffers to separate incompatible uses, such as residential from industrial, airports, or certain activities common to commercial agriculture, are generally open or sparsely populated.
- (13) "Candidate" means any species officially designated as "Candidate" by the appropriate agency of the federal government or by the Washington State Department of Fish and Wildlife.
- (14) "Clay" means that as a soil separate, the mineral soil particles are less than 0.002 millimeter in diameter. As a soil textural class, the soil material is forty (40) percent or more clay, less than forty-five (45) percent sand, and less than forty (40) percent silt.
- (15) "Clearing" means the cutting or removal of vegetation or other organic plant material by physical, mechanical, chemical, or any other means.

- (16) "Comprehensive Plan" means the Benton County Comprehensive Plan and any amendments, addenda, or supplemental plans that are duly adopted under Chapter 36.70 RCW (as amended), for Benton County or any portion thereof.
- (17) "County" means Benton County.
- (18) "Creek" mean those areas of Benton County where surface waters form or have formed a defined channel or bed and for which the State Department Fish and Wildlife has Hydraulic Permit Authority. The channel or bed need not contain water year-round. This definition is not meant to include irrigation ditches, channels, storm or surface water runoff devices or other entirely artificial watercourses unless they are, or have been, used by salmonids or used to convey streams naturally occurring prior to construction in such water course.
- (19) "Critical Aquifer Recharge/Interchange Areas" means those aquifer recharge/interchange areas that have an effect on, or are associated with, aquifers used for potable water in community water systems.
- (20) "Critical Areas" mean those specific resources which are subject to protection by regulation under the Benton County Code (e.g., wetlands, geologically hazardous areas, wildlife conservation areas, frequently flooded areas, aquifer recharge/interchange areas).
- (21) "Critical Areas Overlay Maps" were developed from and are augmented by resource and technical studies, aerial photographs and other resource maps, such as the:
 - (a) Federal Emergency Management Agency's (FEMA), 100-year flood maps,
 - (b) County and other agency Geologic Hazards Map(s),
 - (c) U.S.D.A. Natural Resources Conservation Service (NRCS) Soils Capabilities Map(s),
 - (d) Slope Stability Map(s),
 - (e) U.S. Fish and Wildlife Service (USFWS) National Wetlands Inventory Map(s),
 - (f) Washington State Department of Fish and Wildlife (WDFW), Priority Habitats and Species Maps (PHS),
 - (g) County Shoreline Management Map(s), and
 - (h) other maps as are appropriate.

- (22) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to these regulations at any stage of water level. Development does not include the following activities:
- (a) Interior building improvements that do not change the use or occupancy;
 - (b) Exterior structure maintenance activities, including painting and roofing as long as it does not expand the existing footprint of the structure;
 - (c) Routine landscape maintenance of established, ornamental landscaping, such as lawn mowing, pruning and weeding; and
 - (d) Maintenance of the following existing facilities that does not expand the affected area: septic tanks (routine cleaning); wells; and individual utility service connections.
- (23) "Development Site" means the legal boundaries of the parcel or parcels of land for which an applicant has applied for authority from Benton County to carry out a development proposal.
- (24) "Diversity (ecological)" refers to the variety of species of plants and animals that compose a biotic community or ecosystem, often expressed as total number of different species.
- (25) "Ecological functions" means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the natural ecosystem.
- (26) "Environmental Review" means the procedures and requirements established by the State Environmental Policy Act, Chapter 43.21C RCW as it now exists or is hereafter amended and/or modified.
- (27) "Erosion" means the process in which soil particles are mobilized and transported by natural agents such as wind, rain, splash, frost action or stream flow.
- (28) "Erosion Hazard Areas" refer to those areas which contain soils that may experience severe to very severe erosion hazards as specified by the USDA Soil Conservation Service.

- (29) "Existing topography" means the topography of the lot, parcel, or tract of real property immediately prior to any site preparation or grading, including excavation or filling.
- (30) "Feasible" means that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:
- (a) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
 - (b) The action provides a reasonable likelihood of achieving its intended purpose; and
 - (c) The action does not physically preclude achieving the project's primary intended legal use.

In cases where these regulations require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action's infeasibility, the County may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.

- (31) "Fill" means the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the ordinary high water mark, in wetlands, or on lands in a manner that raises the elevation or creates dry land.
- (32) "Fish and Wildlife" mean any member of the animal kingdom, including without limitation, any vertebrate, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body parts thereof.
- (33) "Fish and Wildlife Conservation Areas" refer to the following.
- (a) Those areas shown on the Fish and Wildlife Conservation Areas Map in the Benton County Comprehensive Plan;
 - (b) Areas identified on the Washington State Department of Fish and Wildlife (WDFW) Priority Habitats and Species (PHS) Map within which a Priority Species is known to have a Primary Association;
 - (c) Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat. These do not include ponds deliberately designed and created from dry sites such as canals,

detention facilities, wastewater treatment facilities, farm ponds, temporary construction ponds (of less than three years duration) and landscape amenities. However, naturally occurring ponds may include those artificial ponds intentionally created from dry areas in order to mitigate conversion of ponds, if permitted by a regulatory authority;

- (d) Lakes, ponds, creeks and rivers planted with native fish populations, including fish planted under the auspices of federal, state, local or tribal programs or which supports priority fish species as identified by the Washington State Department of Fish and Wildlife;
- (e) Washington State Wildlife Areas as identified on Washington Department of Fish and Wildlife maps; and
- (f) Washington State Natural Area Preserves and Natural Resource Conservation Areas as identified on Washington Department of Natural Resources maps.

Fish and wildlife conservation areas does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of, and are maintained by, a port district or an irrigation district or company.

- (34) "Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:
 - (a) The overflow of inland or tidal waters and/or
 - (b) The unusual and rapid accumulation of runoff of surface waters from any source.
- (35) "Floodplain" is synonymous with the one hundred-year floodplain and means that land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year.
- (36) "Frequently Flooded Areas" means those areas of Benton County subject to inundation by a base flood (100-Year Flood) and other flood hazard areas such as creeks, wasteways, wetlands, canyons, and closed depressions which are shown on the County's Geologic Hazards Maps.
- (37) "Geologically Hazardous Areas" are areas which pose potential threats to life or property because of unstable soil, geologic or hydrologic conditions, or steep slopes. Geologically Hazardous Areas shall include, but are not limited to, all landslide and seismic hazard areas.

- (38) "Grading" means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.
- (39) "Groundwater" means the supply of fresh water under the surface of the ground in an aquifer that forms a natural reservoir of potable water.
- (40) "Hearings Examiner" means an examiner appointed by the Board of County Commissioners, authorized to hear and make decisions on variances, conditional use permits, and certain appeals.
- (41) "Impervious Surface" means any material which reduces or prevents absorption of water into previously undeveloped land.
- (42) "Landslide" means episodic downslope movement of a mass of soil or rock.
- (43) "Landslide Hazard Area" refers to those areas of Benton County subject to a severe risk of landslide which include the following:
- (a) Any areas with a combination of:
 - (i) Slopes greater than fifteen (15) percent;
 - (ii) Impermeable soils (typically silt and clay) frequently inter-bedded with granular soils (predominately sand and gravel); or,
 - (iii) Springs or ground water seepage.
 - (b) Any area which has shown movement during the Holocene epoch (from ten thousand 10,000 years ago to present) or which is underlain by mass wastage debris of that epoch;
 - (c) Any area potentially unstable as a result of rapid stream incision, stream bank erosion or undercutting by water action, including stream channel migration zones, or surcharge by upslope irrigation district canals or waterworks;
 - (d) Any area located on an alluvial fan, presently subject to or potentially subject to inundation by debris flows or deposition of stream-transported sediments.
- (44) "Lot Coverage" means that portion of the lot that is covered by structures and other impervious surfaces.
- (45) "Mitigation (sequencing)" means the use of any or all of the following actions that are listed in descending order of preference:

- (a) avoiding the impact altogether by not taking a certain action or parts of an action;
 - (b) minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
 - (c) rectifying the impact by repairing, rehabilitating or restoring the affected sensitive area;
 - (d) reducing or eliminating the impact over time by preservation or maintenance operations during the life of the development proposal;
 - (e) compensating for the impact by replacing, enhancing or providing substitute sensitive areas and environments;
 - (f) monitoring the impact and taking appropriate corrective measures.
- (46) "Modification (of Use or Development)" means any change or alteration in the occupancy, arrangement, placement or construction of any existing use, structure, land, or associated site.
- (47) "Monitoring" means the ongoing evaluation of the impacts of a development proposal on the biological, hydrologic and geologic conditions of Critical Areas. Monitoring includes the gathering of baseline data and the assessment of the performance of required mitigation measures through the collection and analysis of data for the purposes of understanding and documenting changes in natural ecosystems and features.
- (48) "Native Vegetation" refers to plant species which are indigenous to the Central Basin region and which reasonably could have been expected to naturally occur on the site. Native vegetation does not include noxious weeds.
- (49) "New Construction" means structures for which the "start of construction" commenced on or after the effective date of these regulations.
- (50) "One-hundred year flood (100-year Flood)" means the designation on the Federal Emergency Management Act (FEMA) Flood Insurance Maps that denote areas subject to floods having a one (1) percent chance of being equaled or exceeded in any given year. The base flood is determined for existing conditions, unless a basin plan including project flows under future developed conditions has been completed and adopted by Benton County; in these cases, future flow projections shall be used. In areas where the Flood Insurance Study includes detailed base flood calculations, those calculations may be used until projections of future flows are completed and approved by Benton County.

- (51) "Ordinary High Water Mark" means that mark on lakes and streams which will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.
- (52) "Permit" means written government approval issued by an authorized official, empowering the holder thereof to take some action permitted only upon issuance of written approval.
- (53) "Person" refers to any natural person, any state, municipality, or other governmental or other political subdivision or other public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing, and any other entity.
- (54) "Planning Department" means the Benton County Planning Department.
- (55) "Planning Manager" means the Benton County Planning Manager or designee.
- (56) "Primary Association" Used on a regular basis by, is in close association with, or is necessary for the proper functioning of the habitat of a critical species. Regular basis means that the habitat area is normally, or usually known to contain a critical species, or based on known habitat requirements of the species, the area is likely to contain the critical species. Regular basis is species and population dependent. Species that exist in low numbers may be present infrequently yet rely on certain habitat types.
- (57) "Priority habitat" means a habitat type with unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes: Comparatively high fish or wildlife density; comparatively high fish or wildlife species diversity; fish spawning habitat; important wildlife habitat; important fish or wildlife seasonal range; important fish or wildlife movement corridor; rearing and foraging habitat; refuge; limited availability; high vulnerability to habitat alteration; unique or dependent species; or shellfish bed. A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife. A priority habitat may also be described by a successional stage. Alternatively, a priority habitat may consist of a specific habitat element (such as talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or non-priority fish and wildlife.
- (58) "Priority species" means species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable

population levels. Priority species are those that meet any of the criteria listed below:

- (a) State-listed or state proposed species. State-listed species are those native fish and wildlife species legally designated as endangered (WAC 232-12-014), threatened (WAC 232-12-011), or sensitive (WAC 232-12-011). State proposed species are those fish and wildlife species that will be reviewed by the Department of Fish and Wildlife (POL-M-6001) for possible listing as endangered, threatened, or sensitive according to the process and criteria defined in WAC 232-12-297.
 - (b) Vulnerable aggregations. Vulnerable aggregations include those species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to congregate. Examples include heron colonies, seabird concentrations, and marine mammal congregations.
 - (c) Species of recreational, commercial, and/or tribal importance. Native and nonnative fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation.
 - (d) Species listed under the federal Endangered Species Act as either proposed, threatened, or endangered.
- (59) "Priority Species" mean those species listed as:
- (a) Candidate or State Sensitive;
 - (b) endangered or threatened species by the appropriate state or federal agency; or
 - (c) species which are designated by the County to be of local importance.
- (60) "Provisions" means policies, regulations, standards, or guideline criteria.
- (61) "Public Agency" means any agency, political subdivision, or unit of local government of this state including but not limited to municipal corporations, special purpose districts, and local service districts; any agency of the State of Washington, the United States or any state thereof; or any Indian tribe recognized as such by the Federal government.
- (62) "Public interest" means the interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their

- rights or liabilities are affected including, but not limited to, an effect on public property or on health, safety, or general welfare resulting from a use or development.
- (63) "Qualified Professional" means an accredited or licensed professional with a combination of education and experience in the discipline appropriate for the subject matter under review or, someone who would qualify as an expert in their field.
- (64) "Recharge Area" refers to an area in which water is absorbed and added to the groundwater reservoir.
- (65) "Regional Retention/Detention Facility" means a surface water control structure proposed by the surface water management division or a project proponent to be installed in or adjacent to a stream or wetland of a basin or sub-basin.
- (66) "Regulated Substance" means the toxic or natural substances and dangerous waste which have the potential to cause adverse impacts to ground and surface water quality and are controlled to ensure proper management and handling. Toxic and dangerous substances are listed in but not limited to Washington Administrative Code (WAC) 173-201A-040, and WAC 173-303-080.
- (67) "Restore" or "restoration" means the reestablishment or upgrading of impaired ecological processes or functions. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive structures, and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the area to aboriginal or pre-European settlement conditions.
- (68) "Retention/Detention Facility" means a type of drainage facility designed either to hold water for a considerable length of time and then release it by evaporation, plant transpiration and/or infiltration into the ground; or to hold runoff for a short period of time and then release it to the surface and storm water management system.
- (69) "Runoff" refers to the part of precipitation and applied water that flows off the land without infiltrating into the soil.
- (70) "Seismic Hazard Areas" mean those areas of Benton County that are potentially subject to severe risk of earthquake damage as a result of seismically induced ground shaking, slope failure, settlement, soil liquefaction or surface faulting.
- (71) "Silt" refers to individual mineral particles in a soil that range in diameter from the upper limit of clay (0.002 millimeter) to the lower limit of very fine sand (0.05

- millimeter). Soil of the silt textural class is eighty (80) percent or more silt and less than twelve (12) percent clay.
- (72) "Slope" refers to the inclination of the surface of the land from the horizontal.
- (73) "Structure" means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels.
- (74) "Use" means the activity or purpose for which land or structures or combination of land and structures are designed, arranged, occupied, or maintained together with any associated site improvement. This definition includes the construction, erection, placement, movement or demolition of any structure or site improvement and any physical alteration to land itself including any grading, leveling, paving or excavation. Use also means any existing or proposed configuration of land, structures, and site improvements, and the use thereof.
- (75) "Utility" means a primary or accessory service or facility that produces, transmits, stores, processes, or disposes of electrical power, gas, water, sewage, communications, oil, and the like.
- (76) "Vadose Zone Analysis" means the characterization of the soil profile above the water table.
- (77) "Vegetation" means any and all organic plant life growing at, below, or above the soil surface.
- (78) "Water-dependent use" means a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.
- (79) "Wetland" or "wetlands" means that area inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. However, wetlands may include those artificial wetlands specifically intentionally created from non-wetland areas to mitigate conversion of wetlands.

- (80) "Wetland Edge" means the line delineating the outer edge of a wetland established by using the procedures in the currently approved Federal Wetland Delineation Manual.
- (81) "Wetland Functions" refer to the natural processes performed by wetlands and include functions which are important in facilitating food chain production, providing habitat for nesting, rearing and resting site for aquatic, terrestrial or avian species, maintaining the availability and quality of water such as purifying water, acting as recharge and discharge areas for groundwater aquifers and moderating surface water and storm water flows as well as performing other functions including but not limited to those set out in U.S. Army Corps of Engineers regulations at 33 C.R.R. Section 320.4(b)(2) (1988).
- (82) "Zoning district" means a portion of Benton County within which certain uses of land and structures are allowed or conditionally permitted, certain other uses of land and structures are prohibited, and certain development standards may be specified, and includes the terms "zone" and "use district."

CHAPTER 15.70 WETLANDS

15.70.010 APPLICABILITY. This Chapter applies to any real property located within unincorporated Benton County, which are outside shoreline jurisdiction, as determined by the Benton County Shoreline Master Program. Due to the provisions in RCW 36.70A.700 through 63.70A.760, the provisions or standards of this Chapter shall not apply to agricultural activities in certain areas, as defined below. Such agricultural activities are still subject to the requirements of BCC Chapters 15.10 through 15.40.

The following activities are subject to permitting if they occur in a regulated wetland or its buffer:

- (a) The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind.
- (b) The dumping of, discharging of, or filling with any material.
- (c) The draining, flooding, or disturbing the water level or water table.
- (d) Pile driving.
- (e) The placing of obstructions.
- (f) The construction, reconstruction, demolition, or expansion of any structure.

(g) The destruction or alteration of wetland vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland.

(h) Activities that result in:

- (1) A significant change of water temperature.
- (2) A significant change of physical or chemical characteristics of the sources of water to the wetland.
- (3) A significant change in the quantity, timing or duration of the water entering the wetland.
- (4) The introduction of pollutants.

15.70.020 DEVELOPMENTS PERMITTED. Developments within wetlands or their buffers as set forth in this chapter are permitted when sited, designed, and operated in a manner which protects the functions and values of the wetland when such developments meet the requirements of this title.

15.70.030 IDENTIFICATION AND DELINEATION. Wetlands shall be identified and delineated by a qualified professional in accordance with WAC 173-22-035 and designated based on the definitions, methods, and standards set forth in the currently approved Federal Wetland Delineation Manual and applicable regional supplement.

15.70.040 CATEGORIES. Criteria for categorizing a wetland are those specified in the Washington State Department of Ecology's Washington State Wetland Rating System for Eastern Washington, or as revised (Publication #14-06-030).

(a) Category I Wetlands are: 1) alkali wetlands; 2) wetlands that are identified by scientists of the Washington Natural Heritage Program/DNR as wetlands of high conservation value; 3) bogs; 4) mature and old-growth forested wetlands over ¼ acre with slow-growing trees; 5) forests with stands of aspen; and 6) wetlands that perform many functions very well. These wetlands are those that 1) represent a unique or rare wetland type; or 2) are more sensitive to disturbance than most wetlands; or 3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or 4) provide a high level of function.

(b) Category II Wetlands are: 1) forested wetlands in the floodplains of rivers; 2) mature and old-growth forested wetlands over ¼ acre with fast-growing trees; 3) vernal pools; and 4) wetlands that perform functions well.

(c) Category III Wetlands are: 1) vernal pools that are isolated and 2) wetlands with a moderate level of functions. These wetlands generally have been disturbed in some

ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.

(d) Category IV Wetlands are wetlands that should be able to be replaced, and in some cases improved. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions and also need to be protected.

15.70.050 BUFFER REQUIREMENTS FOR DESIGNATED WETLANDS.

(a) Vegetative buffers shall be measured from the wetland edge. The width of the buffer shall be determined according to the wetland type. The standard buffer widths are provided in Table 15-1 below.

(b) The use of the standard buffer widths requires the implementation of the measures in Table 15-2, where applicable, to minimize the impacts of the adjacent land uses.

(c) If an applicant chooses not to apply the minimization measures in Table 15-2, then a 33% increase in the width of all buffers is required. For example, a 75-foot standard buffer would become a 100-foot buffer if the minimization measures are not implemented.

(d) The standard buffer widths assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.

Table 15-1 Wetland Buffers

Wetland Category	Standard Buffer Width Scores 3-4 habitat points	Additional buffer width if wetland scores 5 habitat points*	Additional buffer width if wetland scores 6-7 habitat points*	Additional buffer width if wetland scores 8-9 habitat points*
Category I: Based on total score	75 ft	Add 15 ft	Add 45 ft	Add 75 ft
Category I: Forested	75 ft	Add 15 ft	Add 45 ft	Add 75 ft
Category I: Bogs	190 ft	NA	NA	NA
Category I: Alkali	150 ft	N/A	NA	NA
Category I:	190 ft	N/A	NA	NA

Wetland Category	Standard Buffer Width Scores 3-4 habitat points	Additional buffer width if wetland scores 5 habitat points*	Additional buffer width if wetland scores 6-7 habitat points*	Additional buffer width if wetland scores 8-9 habitat points*
Natural Heritage Wetlands				
Category II: Based on total score	75 ft	Add 15 ft	Add 45 ft	Add 75 ft
Category II: Vernal pool	150	NA	NA	NA
Category II: Forested	75 ft	Add 15 ft	Add 45 ft	Add 75 ft
Category III (all)	60 ft	Add 30 ft	Add 60 ft	NA
Category IV (all)	40 ft	NA	NA	NA

Table 15-2 Required measures to minimize impacts to wetlands

(Measures are required, where applicable to a specific proposal)

Disturbance	Required Measures to Minimize Impacts
Lights	Direct lights away from wetland
Noise	<ul style="list-style-type: none"> ▪ Locate activity that generates noise away from wetland ▪ If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source ▪ For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer
Toxic runoff	<ul style="list-style-type: none"> ▪ Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered ▪ Establish covenants limiting use of pesticides within 150 ft of wetland ▪ Apply integrated pest management
Stormwater runoff	<ul style="list-style-type: none"> ▪ Retrofit stormwater detention and treatment for roads and existing adjacent development ▪ Prevent channelized flow from lawns that directly enters the buffer ▪ Use Low Intensity Development techniques (per PSAT publication on LID techniques)
Change in water regime	Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	<ul style="list-style-type: none"> ▪ Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion. ▪ Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	Use best management practices to control dust
Disruption of corridors or connections	<ul style="list-style-type: none"> ▪ Maintain connections to offsite areas that are undisturbed ▪ Restore corridors or connections to offsite habitats by replanting

15.70.060 INCREASED WETLAND BUFFER WIDTH. Buffer widths shall be increased on a case-by-case basis as determined by the Planning Manager when a larger buffer is necessary to protect wetland functions and values. This determination shall be supported by appropriate documentation showing that it is reasonably related to

protection of the functions and values of the wetland. The documentation must include but not be limited to the following criteria:

- (a) The wetland is used by a plant or animal species listed by the federal government or the state as endangered, threatened, candidate, sensitive, monitored or documented priority species or habitats, or essential or outstanding habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or
- (b) The adjacent land is susceptible to severe erosion, and erosion-control measures will not effectively prevent adverse wetland impacts; or
- (c) The adjacent land has minimal vegetative cover or slopes greater than 30 percent.

15.70.070 BUFFER AVERAGING. Buffer averaging to *improve wetland protection* may be permitted when all of the following conditions are met:

- (a) The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a “dual-rated” wetland with a Category I area adjacent to a lower-rated area.
- (b) The buffer is increased adjacent to the higher-functioning area of habitat or more-sensitive portion of the wetland and decreased adjacent to the lower-functioning or less-sensitive portion as demonstrated by a critical areas special study from a qualified wetland professional.
- (c) The total area of the buffer after averaging is equal to the area required without averaging.
- (d) The buffer at its narrowest point is never less than either $\frac{3}{4}$ of the required width or 75 feet for Category I and II, 50 feet for Category III and 25 feet for Category IV, whichever is greater.

15.70.080 PROTECTION OF WATER QUALITY. The following provisions shall be followed to ensure the protection of the quality of water.

- (a) New surface water discharged to wetlands from developments, including retention/detention facilities, pre-settlement ponds, or other surface water management structures may be allowed provided that the discharge does not decrease the water quality of the wetland;
- (b) Category I and II wetlands may be used for regional retention/detention facilities only when the use will employ the use of pre-settlement ponds and the use will not lower the wetland's level of function and value, or its category;

(c) Use of wetland buffers for surface water management activities other than retention/detention facilities, such as energy dissipators and associated pipes, may be allowed only if:

- (1) no practicable alternative exists; and,
- (2) the functions of the buffer or the wetland are not adversely impacted.

15.70.090 SUBDIVISIONS. The subdivision and/or short subdivision of land in wetlands and associated buffers are subject to the following:

(a) Land that is located wholly within a wetland or its buffer may not be subdivided.

(b) Land that is located partially within a wetland or its buffer may be subdivided provided that an accessible and contiguous portion of each new lot is:

- (1) Located outside of the wetland and its buffer; and
- (2) Meets the minimum lot size requirements of the underlying zoning district.

15.70.100 ALLOWED USES IN WETLANDS AND BUFFERS.

(a) Buffers and application of the mitigation sequencing actions listed in BCC 15.60.010(45) is not required of isolated Category III and IV wetlands less than 1,000 square feet that are not associated with a riparian area or buffer, are not part of a wetland mosaic, do not contain habitat identified as essential for local populations of priority species, and are not a vernal pool or alkali wetland. They may be filled if impacts are fully mitigated based on provisions in BCC 15.70.110. If available, impacts should be mitigated through the purchase of credits from an in-lieu fee program or mitigation bank, consistent with the terms and conditions of the program or bank. In order to verify the following conditions, a critical area special study for wetlands meeting the requirements in BCC 15.50.060(b) must be submitted.

(b) Activities Allowed in Wetlands and Buffers. The activities listed below are allowed in wetlands and buffers without submission of a Critical Areas Special Study, except where such activities result in a loss of the functions and values of a wetland or wetland buffer. These activities include:

- (1) Conservation or preservation of soil, water, vegetation, fish, shellfish, and/or other wildlife that does not entail changing the structure or functions of the existing wetland or buffer.
- (2) The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling

of soil, planting of crops, chemical applications, or alteration of the wetland or buffer by changing existing topography, water conditions, or water sources.

(3) Passive recreation. Passive recreation facilities, including:

(i) Walkways and trails, provided that those pathways are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer twenty-five percent (25%) of the wetland buffer area except for crossings and infrequent view points, and located to avoid removal of significant trees. They should be limited to pervious surfaces no more than five (5) feet in width for pedestrian use only. In wetlands, raised boardwalks utilizing non-treated pilings may be acceptable.

(ii) Wildlife-viewing structures.

(4) Drilling for utilities/utility corridors under a wetland or wetland buffer, with entrance/exit portals located completely outside of the wetland buffer, provided that the drilling does not interrupt the groundwater connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the groundwater connection to the wetland or percolation of surface water down through the soil column will be disturbed.

(5) Enhancement of a wetland or wetland buffer through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Re-vegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.

(6) Educational and scientific research activities.

(7) Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way, provided that the maintenance or repair does not expand the footprint or use of the facility or right-of-way.

(c) Stormwater management facilities. Stormwater management facilities are limited to stormwater dispersion outfalls and bioswales. They may be allowed within the outer twenty-five percent (25%) of the wetland buffer of Category III or IV wetlands only, provided that:

- (1) No other location is feasible; and
- (2) The location of such facilities will not degrade the functions or values of the wetland; and
- (3) Stormwater management facilities are not allowed in buffers of Category I or II wetlands.

15.70.110 COMPENSATORY MITIGATION.

(a) Projects that propose compensation for wetland acreage and/or functions are subject to State and Federal regulations. Compensatory mitigation for alterations to wetlands shall provide for no net loss of wetland functions and values, and must be consistent with the mitigation plan requirements of BCC 15.50.060(b)(5). The following documents were developed to assist applicants in meeting the above requirements.

- (1) Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with Wetland Mitigation in Washington State– Part 2: Developing Mitigation Plans--Version 1, (Ecology Publication #06-06-011b, Olympia, WA,
- (2) Wetland mitigation ratios shall be consistent with Table 15-3.

Table 15-3. Wetland Mitigation Ratios

Category and Type of Wetland	Creation or Re-establishment	Rehabilitation	Enhancement
Category I: Bog, Natural Heritage site	Not considered possible	Case by case	Case by case
Category I: Mature Forested	6:1	12:1	24:1
Category I: Based on functions	4:1	8:1	16:1
Category II	3:1	6:1	12:1
Category III	2:1	4:1	8:1
Category IV	1.5:1	3:1	6:1

(3) To more fully protect functions and values, and as an alternative to the mitigation ratios in Table 15-3, the Planning Manager may allow mitigation based on the “credit/debit” method developed by the Department of Ecology in “Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Eastern Washington: Final Report” (Ecology Publication #11-06-015, August 2012, or as revised).

(4) Impacts to wetland buffers shall be mitigated at a 1:1 ratio. Compensatory buffer mitigation shall replace those buffer functions lost from development.

15.70.120 WETLAND MITIGATION BANKS.

(a) Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:

(1) The bank is certified under RCW Ch. 90.84 or WAC Ch. 173-700,

(2) The Planning Manager determines that the wetland mitigation bank can provide appropriate compensation for the authorized impacts, and

(3) The proposed use of credits is consistent with the terms and conditions of the bank's certification.

(b) Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification.

(c) Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, bank service areas may include portions of more than one adjacent drainage basin for specific wetland functions.

15.70.130 ADVANCE MITIGATION. Mitigation for projects with pre-identified impacts to wetlands may be constructed in advance of the impacts if the mitigation is implemented according to federal rules, State policy on advance mitigation, and State water quality regulations.

15.70.140 MONITORING. Mitigation monitoring shall be required for a period necessary to establish that performance standards have been met, but not for a period less than five years. If a scrub-shrub or forested vegetation community is proposed, monitoring may be required for ten years or more. The project mitigation plan shall include monitoring elements that ensure certainty of success for the project's natural resource values and functions. If the mitigation goals are not obtained within the initial five-year period, the applicant remains responsible for restoration of the natural resource values and functions until the mitigation goals agreed to in the mitigation plan are achieved.

CHAPTER 15.80 CREEKS

15.80.010 APPLICABILITY. This chapter applies to creeks and to development activities within or adjacent to creeks located in unincorporated Benton County, which

are outside shoreline jurisdiction, as determined by the Benton County Shoreline Master Program. Due to the provisions in RCW 36.70A.700 through 63.70A.760, the provisions or standards of this Chapter shall not apply to agricultural activities in certain areas, as defined below. Such agricultural activities are still subject to the requirements of BCC Chapters 15.10 through 15.40.

15.80.020 PERMITTED DEVELOPMENT. Development as set forth in this chapter is permitted when sited, designed, and operated in a manner which protects the functions and values of creeks and when such development meets the requirements of this chapter.

15.80.030 BUFFER REQUIREMENTS. The minimum buffers for above ground development located in the vicinity of creeks are as follows below in Table 15-4. Water type shall be determined according to the water typing system described in WAC 222-16-031.

Table 15-4. Creek Buffers

Water Type	Buffer
Fish-bearing	100 feet
Non-fish-bearing	50 feet

*All dimensions measured in feet horizontally upland of the ordinary high water mark.

15.80.040 PROHIBITED ACTS. The introduction of any vegetation or wildlife which is not indigenous to the Central Basin region into any creek or its nearshore riparian area is prohibited unless authorized by a State of Washington or a federal license or permit. This provision does not apply to vegetation alterations to existing landscaped or agricultural areas.

15.80.050 INCIDENTAL BUFFER ALTERATIONS. Alterations to buffers that occur incidental to construction of an approved use or structure upland of the buffer must be restored to the condition prior to the construction activity once construction is concluded.

15.80.060 PROTECTION OF WATER QUALITY. Use of creek buffers for surface water management activities other than retention/detention facilities, such as energy dissipators and associated pipes, may be allowed only if the applicant demonstrates that no practicable alternative exists.

15.80.070 ALLOWED USES. The following uses are allowed in creek buffers provided that compliance with the mitigation sequencing actions listed in BCC 15.60.010(45) is demonstrated and any adverse impacts to ecological functions are mitigated.

- (a) Water-dependent uses. Water-dependent uses (e.g. bridge), modifications and activities.
- (b) Accessories to water-dependent uses. Uses, developments and activities accessory to water-dependent uses should be located outside any applicable standard or reduced buffer unless at least one of the following is met:
 - (1) proximity to the water-dependent project elements is critical to the successful implementation of the facility's purpose and the elements are supportive of the water-dependent use and have no other utility (e.g., a road to bridge); or
 - (2) the applicant's lot/site has topographical constraints where no other location of the development is feasible (e.g., the water-dependent use or activity is located on a parcel entirely or substantially encumbered by the required buffer).

In these circumstances, uses and modifications accessory to water-dependent uses must be designed and located to minimize intrusion into the buffer.

15.80.080 ENHANCEMENT. Enhancement of creeks not associated with any other development proposal may be allowed when it would improve creek functions. Such determination shall be made by the Planning Manager with the concurrence of state agencies with jurisdiction.

The enhancement shall be performed under a plan for the design, implementation, maintenance, and monitoring of the project which shall be prepared by a civil engineer and a qualified biologist and which shall be carried out under the direct supervision of a qualified professional.

Creek restoration projects for Fish and Wildlife Habitat enhancement by a public agency whose mandate includes such work and which is unassociated with the mitigation of a specific development proposal may be allowed when consistent with the above-specified standards.

CHAPTER 15.90 CRITICAL AQUIFER RECHARGE AREAS

15.90.010 APPLICABILITY. This chapter applies to development activities within or adjacent to critical aquifer recharge/interchange areas located in unincorporated Benton County, which are outside shoreline jurisdiction, as determined by the Benton County Shoreline Master Program. Due to the provisions in RCW

36.70A.700 through 63.70A.760, the provisions or standards of this Chapter shall not apply to agricultural activities in certain areas, as defined below. Such agricultural activities are still subject to the requirements of BCC Chapters 15.10 through 15.40.

15.90.020 PERMITTED DEVELOPMENT. Developments are permitted when sited, designed, and operated in a manner which protects the functions and values of critical aquifer recharge/interchange areas and when such developments meet the requirements of this title.

15.90.030 SITE ANALYSIS REQUIRED. An additional site analysis is required for the following types of activities if such activities have the potential to impact recharge/interchange areas:

- (a) divisions of land;
- (b) commercial, industrial, manufacturing, and multiple residential projects in excess of four (4) units; or
- (c) projects or land use activities which process, stockpile, store, receive, transport, discharge, or produce any chemical or organic product or by-product which may contaminate ground or surface water, except where those projects have the primary purpose of water conservation.

15.90.040 GENERAL INFORMATION REQUIREMENTS FOR UNCONFINED AQUIFERS. The Planning Manager may require some or all of the following information relative to any unconfined aquifer in order to conduct the site analysis:

- (a) depth to groundwater;
- (b) hydro-geological susceptibility to contamination and contamination loading potential;
- (c) hydraulic conductivity and gradient on-site and for relevant adjacent land;
- (d) soil permeability and contamination attenuation;
- (e) a vadose zone analysis including permeability and attenuation properties;
- (f) existing aquifer water quality analysis; and
- (g) a summary of the proposed activity's potential effect on the water quality of any unconfined aquifer.

15.90.050 GENERAL INFORMATION REQUIREMENTS FOR REGULATED SUBSTANCES. The Planning Manager may require any of the following where

regulated substances are associated with a development which has potential to impact an aquifer:

- (a) a description of operations and an identification of regulated substances associated with the project;
- (b) a list of names and volumes of toxic or concentrated organic substances which will be used on the property;
- (c) a list of all substances to be monitored;
- (d) a detailed description of how substances are to be handled at the site;
- (e) a description of the containment devices to be used to comply with the requirements of this chapter and other applicable state and federal requirements;
- (f) a proposed "Regulated Substance Management Plan" or a "Site Management Plan";
- (g) a description of the procedures for inspection and maintenance to assure the proper functioning of containment devices and systems;
- (h) a site map showing the location of the facility and property boundaries and the locations within the facility where regulated substances in containers larger than five (5) gallons or forty (40) pounds are stored, unloaded, tested, used, and/or produced. The location of each containment device (system if there is one) shall also be shown.

15.90.060 PROTECTION OF WATER QUALITY.

- (a) The contamination of groundwater by surface water use, discharge, or runoff shall be prevented.
- (b) New developments, during both construction and operational phases, which generate surface drainage or runoff to ground or surface water shall:
 - (1) assure that the use, handling, discharge, or disposal of regulated substances be accomplished in a manner which prevents their entry into ground or surface waters;
 - (2) retain and clean, to current state discharge standards, runoff prior to its discharge into ground or surface water; and
 - (3) ensure that runoff or stormwater drainage will not result in soil erosion or water quality degradation.

- (c) Water quality standards for critical aquifer re-charge/interchange areas shall correspond with appropriate State and Federal standards.

CHAPTER 15.100 FREQUENTLY FLOODED AREAS

15.100.010 APPLICABILITY. This chapter applies to development activities within frequently flooded areas located in unincorporated Benton County, which are outside shoreline jurisdiction, as determined by the Benton County Shoreline Master Program. Due to the provisions in RCW 36.70A.700 through 63.70A.760, the provisions or standards of this Chapter shall not apply to agricultural activities in certain areas, as defined below. Such agricultural activities are still subject to the requirements of BCC Chapters 15.10 through 15.40.

15.100.020 DEVELOPMENT PERMITTED. Developments within frequently flooded areas as set forth in this chapter are permitted when sited, designed, and operated to protect the functions and values of frequently flooded areas and when such developments meet the requirements of this chapter.

15.100.030 SITE ANALYSIS. A site analysis is required for the purpose of establishing a pre-construction site elevation at the lot's highest point at the proposed building foundation, and to assess any changes to the direction of flood flows and amounts of flood waters displacement. The Planning Manager may require a Site Plan showing all existing and general locations of future structures as well as riparian vegetation.

15.100.040 DEVELOPMENT--GENERAL REQUIREMENTS.

- (a) New development is permitted when sited and designed in a manner that does not alter the direction, velocity, or volume of flood waters in a manner that adversely impacts other properties within or adjacent to Frequently Flooded Areas.
- (b) All developments must follow the provisions of the Benton County Flood Damage Prevention ordinance;
- (c) Water quality standards for frequently flooded areas shall correspond with appropriate state and federal standards.

CHAPTER 15.110 GEOLOGICALLY HAZARDOUS AREAS

15.110.010 APPLICABILITY. This chapter applies to development activities within or adjacent to geologically hazardous areas, including steep slopes, or hillsides located in unincorporated Benton County, which are outside shoreline jurisdiction, as determined by the Benton County Shoreline Master Program. Due to the provisions in RCW 36.70A.700 through 63.70A.760, the provisions or standards of this Chapter shall not apply to agricultural activities in certain areas, as defined below. Such agricultural activities are still subject to the requirements of BCC Chapters 15.10 through 15.40. A steep slope is defined as one with a slope of fifteen (15) percent or more or where Critical Areas Overlay Maps indicate potentially hazardous conditions.

15.110.020 PERMITTED DEVELOPMENT. Development as set forth in this chapter is permitted when sited, designed, and operated in a manner which protects life, property, and the public welfare and when such development meets the requirements of this title.

15.110.030 PROHIBITED DEVELOPMENT. New development and creation of new lots that would cause foreseeable risk from geological conditions during the life of the development is prohibited.

15.110.040 MINIMUM HAZARD SETBACK REQUIREMENTS. For the purposes of this chapter, a minimum hazard setback for development within or adjacent to a Geologically Hazardous Area shall be the hazard setback recommended in the Site Analysis and/or by the Building Department.

15.110.060 SITE ANALYSIS – GENERAL REQUIREMENTS. A site analysis is required within geologically hazardous areas and within 200 feet of geologically hazardous areas. In order to complete an analysis, the Planning Manager may require any of the following:

- (a) the physical features of the site, including identification of surface and subsurface soil types, vegetation, streams, canyons, alluvial fans, and drainage ways. Topography shall be shown in five (5) foot contours unless prior approval is received for contours greater than five (5) feet;
- (b) lot and parcel sizes, proposed lot coverage, type of dwelling units, square footage, dimensions, general type of construction and location of all structures, the existing and proposed utility systems including wells, sanitary sewers, electric, gas, and telephone, and other pertinent information requested by the Planning Manager;

- (c) the general location and different circumstances that might be expected to precipitate a geological event;
- (d) the geologic, topographic, and hydrologic factors that might contribute to slope instability, particularly springs or seeps, subsurface layers of clay or other fine-grained materials or unconsolidated fill, and the location of the site susceptible to instability;
- (e) suitable buildable areas taking into consideration the long term stability and maintenance of access roads and all other permanent infrastructure needs that would be affected by both the underlying geology and soils;
- (f) recommended hazard setbacks to protect the geologic and topographic features;
- (g) relying on existing data, areas with known or potential for seismic hazard;
- (h) the rate and extent of any potential hazards such as erosion, sliding, slumping etc., must be analyzed in light of the potential to impact the public health, safety and welfare;
- (i) the potential impact of residential landscape irrigation, drain-fields, upslope and off-site irrigation activities, storm water generation from upslope properties and proposed impervious surfaces on-site, and the influence of street conveyance on slope stability;
- (j) proposed access, parking, and basic internal vehicle/pedestrian circulation system;
- (k) the proposed system for retention and release (detention) of storm and surface water runoff generated from the site;
- (l) general landscaping plan indicating the type and placement of materials used around all structures, parking areas and other cleared portions of the site;
- (m) the relationship between the proposed development and existing and proposed adjacent areas;
- (n) where development is proposed downslope of lands in, or with the potential for agriculture, analysis of the impact of surface and subsurface movement of waste irrigation water on the proposed development site shall be provided. The analysis shall include descriptions of the relevant soils, geologic, and hydrologic conditions of the project site and the upslope lands;
- (o) for public buildings and facilities: identification of minimum design standards where seismic activity has the potential to occur.

15.110.070 REQUIRED PLANS.

(a) A site development and grading plan which meets the requirements of BCC 15.110.060 and accomplishes the following objectives shall be developed and submitted to the Planning Manager for projects within 200 feet of geologically hazardous areas:

- (1) assure long term structural integrity of all development;
- (2) protect the public health, safety, and welfare by minimizing the potential for public expenditures for post-project geologic, soils, and hydrology hazards remediation;
- (3) avoid documented seismic and landslide hazard areas as locations for building construction, roads or utility systems where mitigation is not feasible;
- (4) eliminate as completely as practicable, any public or private exposure to landslide hazards or to abnormal maintenance or repair costs through the application of post construction slope stabilization and appropriately upgraded road construction specifications where appropriate;
- (5) minimize storm water runoff and soil erosion impacts;
- (6) control dust during all construction phases;
- (7) achieve maximum feasible retention, in their natural condition, of existing topographic features such as drainage swales, streams, slopes, structurally important ridge lines and rock outcroppings; and
- (8) minimize grading where it will adversely impact slope stability.

(b) All development and grading plans shall be approved by the appropriate County departments in order to ensure compliance with the current application of the County's Side Hill Development Standards.

(c) All development and grading plans shall adhere to the requirements of the Benton-Franklin Health District.

(d) In areas of steep slopes and natural drainages, when construction will extend into the rainy season and potentially cause eroded sediments to move offsite, the storm and surface water runoff retention and detention system must be completed before other phases of site development are begun so that it can serve as a sediment trap during the remainder of the construction.

CHAPTER 15.120 FISH AND WILDLIFE CONSERVATION AREAS

15.120.010 APPLICABILITY. The provisions of this chapter shall apply within unincorporated Benton County to upland Priority Species and Priority Habitats, which are outside shoreline jurisdiction, as determined by the Benton County Shoreline Master Program. Due to the provisions in RCW 36.70A.700 through 63.70A.760, the provisions or standards of this Chapter shall not apply to agricultural activities in certain areas, as defined below. Such agricultural activities are still subject to the requirements of BCC Chapters 15.10 through 15.40. While wetlands and creeks, and their buffers may also be considered Fish and Wildlife Conservation Areas, other provisions of this title provide specific standards for study, protection and application of mitigation sequencing to those types of Fish and Wildlife Conservation Areas.

15.120.020 PERMITTED DEVELOPMENT. Developments adjacent to upland Priority Species or adjacent to or within Priority Habitats and their buffers are permitted when sited, designed, and operated in a manner which protects the functions and values of upland Priority Species and Priority Habitats, and when such development meets the requirements of this title.

15.120.030 MINIMUM BUFFER REQUIREMENTS. Buffers for upland Priority Species and Priority Habitats shall be determined by the Planning Manager based upon Washington Department of Fish and Wildlife recommendations after consultation with the applicant, state, and where appropriate, federal agencies and the Yakama Nation.

15.120.040 SITE ANALYSIS REQUIRED.

(a) Where a regulated development or use is proposed on a parcel containing a mapped upland Priority Species or wholly or partially within a mapped upland Priority Habitat, the parcel shall be surveyed to determine if the following are associated with the parcel:

- (1) federal and state listed endangered, threatened, sensitive, or candidate species; and
- (2) any listed plant or animal species on the Washington Department of Natural Resources Natural Heritage Program lists.

(b) A Critical Area Special Study shall be performed if the resources identified in BCC 15.120.040(a) are found to be associated with the parcel. The following shall be identified:

- (1) the nature and extent of the species' primary association with the habitat area;

- (2) the relative density and species richness, breeding, habitat, seasonal range dynamics and movement corridors;
- (3) the relative tolerance of species to human activities;
- (4) the influence of the project, individually and cumulatively, on the wildlife and associated habitats;
- (5) mitigative measures for any project element that would potentially threaten baseline populations and reproduction rates over the long term; and
- (6) information about the presence of migratory species and any migratory patterns.

15.120.050 GENERAL STANDARDS FOR HABITAT MANAGEMENT. The maintenance of sufficient habitat to support baseline populations for all species identified in BCC 15.120.040(a) shall be the objective pursued through the application of flexible site planning and timing of construction, Best Management Practices, and habitat management programs.

Sources of Best Available Science

FOR BENTON COUNTY CRITICAL AREAS

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SOURCES OF BEST AVAILABLE SCIENCE

FOR BENTON COUNTY CRITICAL AREAS

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